

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BARRY ANTHONY VANN,

Plaintiff,

v.

MIKE VANDENBROOK,
R.N. STEVE HELGERSON,
and OFFICER JOHN DOE 1,

Defendants.

ORDER

09-cv-007-bbc

Plaintiff was granted leave to proceed in this action on February 2, 2009. On March 16, 2009, defendants Vandebrook and Helgersen answered plaintiff's complaint, raising various affirmative defenses. (An answer has not been filed on behalf of defendant Officer John Doe 1 because this defendant has not yet been identified. In this court, the matter of identifying John or Jane Doe defendants is addressed at a preliminary pretrial conference. Such a conference is scheduled to be held in this case on April 6, 2009.) Now plaintiff has filed a reply to the answer, dkt. #13, in which he moves to strike or deny affirmative defenses raised by defendants in the answer. In addition, plaintiff has filed two affidavits, dkts. ##14 and 15, in which he avers that the factual statements in the complaint are true.

Fed. R. Civ. P. 12(b) permits a defendant to avoid litigation of a case if plaintiff's allegations of fact are insufficient to make out a legal claim against the defendant. Although defendants have raised certain affirmative defenses in their answer, they have not filed a motion to dismiss. If such a motion were to be filed, plaintiff would be allowed to respond to it. Otherwise, it is not necessary for plaintiff to respond to defendants' answer. Indeed, Fed. R. Civ. P. 7(a) forbids a plaintiff from submitting a reply to an answer unless directed by the court. No such order has been entered in this case. Plaintiff should be aware, however, that he is not prejudiced by Rule 7(a). Under Fed. R. Civ. P. 8(b)(6), the court assumes that the plaintiff denies the answer. Therefore, although plaintiff is not permitted to respond to defendants' answer, the court assumes that he has denied the factual statements and affirmative defenses raised in that answer.

ORDER

IT IS ORDERED that plaintiff's reply to defendant's answer, dkt. #13, will be placed in the court's file but will not be considered.

Entered this 6th day of April, 2009.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge

